



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Doc. No. AMS-FV-14-0046; FV14-945-2 FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that modified the container requirements prescribed under the Idaho-Eastern Oregon potato marketing order. The interim rule removed the requirement that fiberboard cartons used to pack 50-pound quantities of U.S. No. 2 grade potatoes be of one-piece construction. This change is in response to market demands and provides handlers flexibility in shipping U.S. No. 2 grade potatoes. In addition, this rule corrected a citation reference in the handling regulations.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement

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Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

The handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon is regulated by 7 CFR part 945. Prior to this change, handlers could only pack 50-pound quantities of U.S. No. 2 grade potatoes in a one-piece fiberboard carton. These one-piece cartons were often damaged in transit and were more expensive to purchase. Therefore, this rule continues in effect the rule that removed the container requirement that fiberboard cartons used to pack 50-pound quantities of U.S. No. 2 grade potatoes be of one-piece construction. Additionally, this rule corrected a citation reference in the order's handling regulations.

In an interim rule published in the **Federal Register** on August 6, 2014, and effective on August 7, 2014, (79 FR 45673, Doc. No. AMS-FV-14-0046, FV14-945-2 IR), § 945.341(c)(2)(ii) was amended by removing the word "one-piece" and § 945.341(b)(3)(i) and (ii) were amended by replacing the reference "(b)(4)(iii)" with the reference "(b)(3)(iii)".

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 450 producers of potatoes in the production area and approximately 32 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201).

During the 2012-2013 fiscal period, the most recent for which statistics are available, 35,148,900 hundredweight of Idaho-Eastern Oregon potatoes were inspected under the order and sold into the fresh market. Based on information provided by the National Agricultural Statistics Service, the average producer price for the 2012

Idaho potato crop was \$5.30 per hundredweight. Multiplying \$5.30 by the shipment quantity of 35,148,900 hundredweight yields an annual crop revenue estimate of \$186,289,170. The average annual fresh potato revenue for each of the 450 producers is therefore calculated to be \$413,396 (\$186,289,170 divided by 450), which is less than the SBA threshold of \$750,000. Consequently, on average almost all of the Idaho-Eastern Oregon potato producers may be classified as small entities.

In addition, based on information reported by USDA's Market News Service, the average f.o.b. shipping point price for the 2012 Idaho potato crop was \$5.87 per hundredweight. Multiplying \$5.87 by the shipment quantity of 35,148,900 hundredweight yields an annual crop revenue estimate of \$206,324,043. The average annual fresh potato revenue for each of the 32 handlers is therefore calculated to be \$6,447,626 (\$206,324,043 divided by 32), which is less than the SBA threshold of \$7,000,000. Consequently, on average most all of the Idaho-Eastern Oregon potato handlers may be classified as small entities.

This rule continues in effect the action that relaxed the container requirements to allow handlers to ship U.S. No. 2 grade potatoes in any type of 50-pound fiberboard

cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade. This will enable handlers to respond to market demands and provide greater flexibility in shipping U.S. No. 2 grade potatoes. In addition, this rule makes changes to the order's handling regulations to correct a citation reference.

The authority for the establishment of pack and marking requirements is provided in § 945.52 of the order. Section 945.341(c) of the order's administrative rules prescribes the pack and marking requirements for domestic and export shipments of potatoes.

This action is expected to increase shipments of U.S. No. 2 potatoes to the food service industry and help the Idaho-Eastern Oregon potato industry benefit from the recent increased growth in demand from the food service industry sector. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178

(Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 22, 2014, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before October 6, 2014. No comments were received. Therefore, for the reasons given in the interim

rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0046-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (79 FR 45673, August 6, 2014) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that amended 7 CFR part 945 and that was published at 79 FR 45673 on August 6, 2014, is adopted as a final rule, without change.

Dated: November 5, 2014.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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